

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Debra Figone

**SUBJECT:** Suspension of SRBR Payments

**DATE:** April 9, 2012

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**COUNCIL DISTRICT:** City-Wide  
**SNI AREA:** N/A

## RECOMMENDATION

It is recommended that the City Council:

- (a) Approve an ordinance amending Section 3.36.580 of Part 4 of Chapter 3.36 of Title 3 of the San Jose Municipal Code to continue to suspend the supplemental retiree benefit reserve distribution from the Police and Fire Retirement Plan for Fiscal Year 2011-2012 and provide that there shall be no supplemental retiree benefit reserve distribution from the Police and Fire Department Retirement Plan during Fiscal Year 2012-2013, upon a finding that is needed to adopt the ordinance within a time period which does not allow for a sixty day review period by the Board of Administration of the Police and Fire Department Retirement Plan under San Jose Municipal Code Section 3.36.485.A.; and refer the ordinance to the Board for study and consideration pursuant to San Jose Municipal Code Section 3.36.485.B; and
- (b) Direct staff to forward for review by the Board of Administration of the Federated City Employees' Retirement Plan a draft resolution amending and restating Resolution No. 75635 to continue to suspend the supplemental retiree benefit reserve distribution from the Federated City Employees' Retirement Plan for Fiscal Year 2011-2012 and provide that there shall be no supplemental retiree benefit reserve distribution from the Federated City Employees' Retirement Plan during Fiscal Year 2012-2013.

## OUTCOME

Approval of the recommendation will continue to suspend the supplemental retiree benefit reserve distribution from the Police and Fire Retirement Plan and the Federated City Employees' Retirement Plan for Fiscal Year 2011-2012 and the suspension of the Supplemental Retiree Benefit Reserve payments from the City's Police and Fire Department Retirement Plan and the Federated City Employees' Retirement System during Fiscal Year 2012-2013.

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## **EXECUTIVE SUMMARY**

The Supplemental Retiree Benefit Reserve (SRBR) in each Plan provides a supplemental "13<sup>th</sup> check" benefit under certain conditions as specified in the Municipal Code. The 13<sup>th</sup> check is in addition to the monthly pension payments, disability and survivor benefits, annual 3% fixed cost of living adjustment (COLA) and retiree healthcare benefits eligible retirees receive.

Based on the SRBR distribution provisions currently specified in the Code, it is anticipated that there will be a distribution of payments to retirees from both the Federated City Employees' Retirement System and Police and Fire Department Retirement Plan in Fiscal Year 2012-2013 once the suspension ends for Fiscal Year 2011-2012, pending the outcome of the June 2012 election. The amount of distribution from both plans is estimated to be approximately \$7.86 million.

As of June 30, 2011, the plans' unfunded liabilities for pension benefits totaled \$1.492 billion. In addition, the Federated plan has an \$800.5 million unfunded liability for Other Post Employment Benefits (OPEB) and the Police and Fire plan has a \$596.7 million unfunded liability. OPEB benefits include retiree healthcare benefits. Regardless of the unfunded liability in each plan, the SRBR can still result in the distribution of SRBR payments (13<sup>th</sup> check) to retirees.

On October 26, 2010, the City Council approved to temporarily suspend the Supplemental Retiree Benefit Reserves (SRBR) payments during Fiscal Year 2010-2011. On May 17, 2011, the City Council approved actions to continue this suspension for Fiscal Year 2011-2012.

On March 6, 2012, the City Council approved a ballot measure for the June 2012, election that would include various proposed changes to the Charter regarding retirement benefits. The ballot measure, if passed by the voters, would eliminate the SRBR for both the Police and Fire Department Retirement Plan and the Federated City Employees' Retirement System.

Due to the plans' significant unfunded liabilities and the pending outcome of the June 2012, election, it is recommended that the SRBR distributions continue to be suspended for Fiscal Year 2012-2013.

## **BACKGROUND**

On October 26, 2010, the City Council approved to temporarily suspend the Supplemental Retiree Benefit Reserves (SRBR) payments during Fiscal Year 2010-2011. On May 17, 2011, the City Council approved actions to continue this suspension for Fiscal Year 2011-2012.

On March 6, 2012, the City Council approved a ballot measure for the June 2012, election that would include various proposed changes to the Charter regarding retirement benefits. As part of the direction, the City Council requested that the City's negotiation team invite all bargaining groups to re-engage in mediation regarding all retirement issues, including the related ballot measure. The ballot measure, if passed by the voters, includes a provision that would eliminate

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the SRBR for both the Police and Fire Department Retirement Plan and the Federated City Employees' Retirement System.

## **ANALYSIS**

### *Federated City Employees' Retirement System*

In 1986, the City Council established the Supplemental Retiree Benefit Reserve (SRBR) in the Federated City Employees' Retirement System to allocate investment income earned by retirement fund assets that exceeds expected returns to an account that would fund new, or supplemental, benefits for retirees. The SRBR was patterned on State legislation that had been adopted in 1983 to permit certain counties to do the same.

The Municipal Code sets forth a methodology for allocating funding to the SRBR but does not set forth a methodology for distributing the money in the SRBR to the Federated retirees<sup>1</sup>. (Attachment A) In 2003, the City Council adopted a Resolution establishing the current distribution methodology.<sup>2</sup> (Attachment B)

Under the section of the San Jose Municipal Code governing the Federated City Employees' Retirement System (SJMC§3.8.340), the City Council can make recommendations to the Board of Administration of the Federated City Employees' Retirement System regarding the distribution, if any from the Federated SRBR, and upon consideration of the recommendation of the Board, the City Council can determine the amount, if any, of the distribution to be made from the Federated SRBR.

The San Jose Municipal Code does not need to be amended to permit the City Council to implement a suspension of Federated SRBR payments. However, the Municipal Code does require the City Council to refer the recommendation for such suspension to the Board of Administration of the Federated City Employees' Retirement System, and to act after receipt of the Federated Board recommendation of such change in the distribution. It is recommended that the draft resolution be referred to the Board for its consideration at the April 19, 2012, board meeting and that the City Council consider the comments, if any, from the Board on April 24, 2012, and decide whether or not to suspend the distribution. The Resolution would return to the City Council for final approval on May 22, 2012.

### *Police and Fire Department Retirement Plan*

In 2001, the City Council adopted an ordinance establishing an SRBR program within the Police and Fire Department Retirement Plan.<sup>3</sup> (Attachment C)

In 2002, the Council adopted a Resolution approving the methodology for distribution of moneys from the Police and Fire SRBR to all retired members and survivors.<sup>4</sup> (Attachment D)

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<sup>1</sup> San Jose Municipal Code Section 3.28.340B

<sup>2</sup> Resolution No. 71870

<sup>3</sup> San Jose Municipal Code Section 3.36.580

<sup>4</sup> Resolution No. 70822

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In order to implement that there be no distribution from the Police and Fire SRBR during Fiscal Year 2012-2013, it is recommended that the San Jose Municipal Code be amended to suspend distribution until after June 30, 2012. Under San Jose Municipal Code Section 3.36.485, prior to the City Council adoption of any ordinance amending the Police and Fire Department Retirement Plan, the Board of Administration for the Police and Fire Department Retirement Plan is to be provided within sixty (60) days for review and comment on the proposed ordinance, unless the City Council finds that there is a need to adopt the ordinance within a time period which does not allow for a sixty day review period, in which case the City Council can adopt an urgency ordinance or when the ordinance is passed for publication of title, the City Council refers the ordinance to the Board for study and consideration and upon the recommendation, if any, from the Board, the City Council implements or disapproves the Board's recommendation. Because the distribution of the SRBR could occur before the sixty day review period, if the City Council wishes to ensure that no distribution occur during Fiscal Year 2012-2013, a finding that there is need to adopt the ordinance within a time period which does not allow for a sixty day review period should be made and the ordinance referred to the Board of Administration for the Police and Fire Department Retirement Plan for study and recommendation. If the Council receives a recommendation if any, from the Board, it could decide to reconsider the matter taking the Board's comments at such time. The second reading of the ordinance will be considered by the City Council on May 22, 2012.

#### *Distribution Methodology*

The distribution methodology for each plan is memorialized in Resolutions 71870 and 70822. Under the Federated distribution methodology, all retired members and survivors receive a disbursement when the plans' investment returns exceed expected returns. Under the Police and Fire distribution methodology, all retired members and survivors receive a disbursement, so long as the SRBR principal balance would not be reduced by the distribution. For both plans, the criteria for determining the payment amount is based on a "point" system. Retirees receive points based on years of service, number of years retired and final average salary. Under this methodology, the largest payments are made to retirees that have been retired the longest and have rendered the longest service to the City.

The SRBR in each retirement plan was established based on the concept that when the two retirement plans have "excess" earnings a portion of these "excess" earnings are used to provide a fund for additional benefits to retirees. The Federated City Employees' Retirement System assumes a 7.50% return. The Police and Fire Department Retirement Plan recently approved lowering the assumed rate of return to 7.50%. When the plans actual investment returns exceed the expected returns, a portion of these "excess earnings" is transferred into the SRBR.

However, the Board's actuaries have numerous assumptions including economic and non-economic factors such as salary growth, expected retirements, and mortality rates. When the Plans do not meet these assumptions, it results in an unfunded liability. As previously indicated, the City, and ultimately taxpayers are responsible for 100% of any unfunded pension liability. This is also the case when the investment returns do not meet the assumed rate of return adopted by the boards. The City has been experiencing significant increases in retirement contributions. This is due to investment losses in prior years, granting of retroactive benefit enhancements and

the assumptions used by the plans' actuaries to calculate liabilities and contribution rates not holding true.

Both the Federated City Employees' Retirement System and Police and Fire Department Retirement Plan had investment returns as of June 30, 2011, that exceeded the assumed rate of return for each plan. As a result, it is anticipated that the SRBR distributions will be made to retirees even though the Plans have a significant unfunded liability. The following chart provides the balance in the SRBR as of June 30, 2011.

<b>Retirement Plan</b>	<b>SRBR Balance</b>
Federated	\$30,583,315
Police & Fire	\$33,416,870

The retirement boards' actuary has calculated that the following amounts would be available for distribution to retirees.

<b>Retirement Plan</b>	<b>Amount of Distribution</b>
Federated	\$6.587 million
Police and Fire	\$1.281 million

Under the Municipal Code and the SRBR distribution resolutions, distributions could occur as early as July 1, 2012, after the Boards' declaration of "excess" earnings.

Due to the rising increases in retirement costs, the City Council approved a ballot measure on March 6, 2012, that would include various proposed changes to the Charter regarding retirement benefits. The ballot measure includes a provision that would eliminate the SRBR if passed by the voters.

The SRBR payments are only temporarily suspended through June 30, 2012. Therefore, it is possible that distribution of SRBR payments could be made as early as July 1, 2012. If the ballot measure, as approved by the City Council, is placed on the June 2012, election, it is expected that the certified results would not be available until after July 1, 2012.

It is recommended that the City Council continue to suspend the supplemental retiree benefit reserve distribution during Fiscal Year 2012-2013, pending the results of the June 2012 election.

#### **PUBLIC OUTREACH/INTEREST**



**Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.

**(Required: Website Posting)**

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- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This report will be posted on the internet and a copy will be sent to the bargaining unit representatives and the retiree associations as soon as the memo has been distributed.

### **COORDINATION**

This memo has been coordinated with the City Attorney's Office.

### **CEQA**

CEQA: Not a Project, File No. PP10-068(b), (Municipal Code or Policy, new or revised)

  
Debra Figone  
City Manager

For questions please contact Alex Gurza, Deputy City Manager, at 535-8155.

Attachment A: San Jose Municipal Code Section 3.28.340B

Attachment B: Resolution No. 71870

Attachment C: San Jose Municipal Code Section 3.36.580

Attachment D: Resolution No. 70822

**3.28.340 Disposition of earnings.**

- A. Definitions. For the purpose of this Section 3.28.340, the terms listed herein shall have the following meanings:
1. "Income account" means the account established in the general reserve pursuant to subsection B. below.
  2. "Interest crediting rate" means the interest rate determined by the Board for crediting the employee contribution reserve.
- B. Retirement fund reserves. There shall be established in the retirement fund the following reserves:
1. The employee contribution reserve.
    - a. The board shall credit to the employee contribution reserve all contributions made by members of the retirement system and all interest payable pursuant to subsection C. below.
    - b. Moneys in the employee contribution reserve shall be available for the payment of benefits and for the return of contributions pursuant to Section 3.28.780.
  2. The supplemental retiree benefit reserve.
    - a. The board shall credit to the supplemental retiree benefit reserve all interest payable pursuant to subsection C. below and that portion of the excess earnings determined pursuant to subsection D. below.
    - b. Distributions from the supplemental retiree benefit reserve shall be made in accordance with subsection E. below.
  3. The general reserve.
    - a. The board shall establish an income account and shall credit the income account with all rents, interest, dividends, realized gains and losses, unrealized gains and losses, and all other income other than employer contributions, received during the fiscal year. The board shall pay from the income account all expenses and administrative costs as they are incurred.
    - b. The board shall credit to the general reserve all contributions made by the city, all interest payable pursuant to subsection C. below, and that portion of the excess earnings determined pursuant to subsection D. below.
    - c. Moneys in the general reserve shall be available for the payment of benefits and for the payment of the expenses and administrative costs of the retirement system.

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4. Such other reserves as the board may determine from time to time.
- C. Credit to contributions and reserves. All interest credited pursuant to this subsection C. shall be deducted from the income account.
1. Interest shall be credited to the employee contribution reserve on a semi-annual basis, or more frequently if authorized by the board, at the interest crediting rate.
  2. Interest shall be credited to the supplemental retiree benefit reserve at the actuarially assumed annual rate of return adopted by the board pursuant to Section 3.28.200 or at the actual rate of return earned by the retirement fund during the applicable fiscal year, whichever is lower. Interest credited to the supplemental retiree benefit reserve shall be calculated as though the transfer of excess earnings required by subsection D. had been made on July 1 of the calendar year, regardless of the actual date such transfer is made.
  3. Interest shall be credited to the general reserve as follows:
    - a. Interest at the actuarially assumed annual rate of return adopted by the board pursuant to Section 3.28.200 or at the actual rate of return earned by the retirement fund during the applicable fiscal year, whichever is lower; plus
    - b. Interest calculated as the difference between (i) the interest that would have been credited to the employee contribution reserve had the employee contribution reserve been credited at the actuarially assumed annual rate of return adopted by the board pursuant to Section 3.28.200 or at the actual rate of return earned by the retirement fund during the applicable fiscal year, whichever is lower, and (ii) the interest actually credited to the employee contribution reserve pursuant to subsection C.1. above; provided, however, that there shall be no offset to the general reserve in any case where this difference is a negative number.
  4. Interest shall be credited to any other reserves established by the board in the same manner as interest is credited to the supplemental retiree benefit reserve.
- D. Excess earnings.
1. Within ninety days from and after receipt of audit reports for each fiscal year, the board shall determine the balance remaining in the income account after crediting of interest as provided in subsection C. above, and after payment of administrative costs and expenses of the retirement system for the applicable fiscal year.
  2. If the balance remaining in the income account is greater than zero, the board shall by written resolution declare that balance to be the excess earnings for the applicable fiscal year, shall transfer ten percent of the excess earnings to the supplemental retiree benefit reserve, and shall transfer the remaining ninety percent of the excess earnings to the general reserve. If the balance remaining in the income account is less



## **Federated City Employees' Retirement System**

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than or equal to zero, the board by written resolution shall declare that there are no excess earnings and shall adjust the general reserve to reflect any negative balance in the income account so that the balance in the income account is zero as of the beginning of each fiscal year.

**E. Distributions from the supplemental retiree benefit reserve.**

1. The supplemental retiree benefit reserve shall be used only for the benefit of retired members, survivors of members, and survivors of retired members.
2. Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding the distribution, if any, of the supplemental retiree benefit reserve to retired members, survivors of members, and survivors of retired members. The city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental retiree benefit reserve to said persons.

(Prior code § 2904.1103; Ords. 20596, 22263, 22486, 23087, 25092, 27436.)

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Res. No. 71870

RESOLUTION NO. 71870

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN  
JOSÉ APPROVING THE METHODOLOGY FOR THE  
DISTRIBUTION OF MONEYS IN THE SUPPLEMENTAL  
RETIREE BENEFIT RESERVE OF THE FEDERATED CITY  
EMPLOYEES RETIREMENT FUND**

WHEREAS, pursuant to Section 3.28.340 D of the San José Municipal Code, the Board of Administration for the Federated City Employees Retirement System (the "Board") has established the Supplemental Retiree Benefit Reserve (the "SRBR") in the Federated City Employees Retirement Fund; and

WHEREAS, Section 3.28.340 D 1. provides that distributions from the SRBR shall be made only for the benefit of retired members, survivors of members, and survivors of retired members of the Federated City Employees Retirement System (the "System"); and

WHEREAS, Section 3.28.340 D 3. further provides that the Board shall make distributions in accordance with a methodology recommended by the Board and approved by the City Council; and

WHEREAS, the Board has developed a methodology for calculating the amount of distributions from the SRBR and has recommended City Council approval of said methodology;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSÉ:

**SECTION 1.** The City Council hereby approves the methodology for the distribution of moneys from the Supplemental Retiree Benefits Reserve of the Federated City Employees Retirement Fund recommended by the Board and described in this Resolution.

**SECTION 2.** This approval shall remain in effect until such time as the Board recommends a subsequent methodology and the Council adopts a resolution approving the subsequent methodology.

**SECTION 3. Total Annual Distribution.**

- A. The Total Annual Distribution for calendar year 2003 shall be One Million Dollars (\$1,000,000).
- B. The Total Annual Distribution for each calendar year beginning calendar year 2004 shall be the sum of (a) the amount, if any, in excess of the Minimum Balance, and (b) the annual interest earned in the SRBR as of June 30 in the year of distribution. For any year in which the actual balance in the SRBR as of June 30 in the year of distribution is less than or equal to the Minimum Balance, the total distribution for that year shall be limited to the annual interest earned in the SRBR.

**SECTION 4. Eligible Distribution Points.**

- A. For the purposed of calculating the distribution to be made to each eligible recipient, distribution points shall be assigned for Years of Service and for Years Retired as follows:

1. Years Of Service (YOS) Points:

- a. For each Retiree, there shall be assigned one (1) point for each year of the Retiree's Federated City service.
- b. For each Surviving Spouse of a Retiree, there shall be assigned one (1) point for each year of the Retiree's Federated City service.
- c. For each Surviving Spouse of an Active Member, there shall be assigned one (1) point for each year of the Active Member's Federated City service.
- d. For each Surviving Children's Unit, there shall be assigned one (1) point for each year of the deceased person's Federated City service.
- e. For each Optional Settlement Beneficiary, there shall be assigned one (1) point for each year of the deceased person's Federated City service.

2. Years Retired (YR) Points:

- a. For each Retiree, there shall be assigned the number of points equivalent to the number of years from the effective date of the Retiree's retirement to the June 30 in the year for which the Total Annual Distribution is calculated multiplied by the percent of Final Average Salary the Retiree receives as a retirement benefit under the System's benefit formula.
- b. For each Surviving Spouse of a Retiree, there shall be assigned the number of points equivalent to the sum of:
  - i. The number of years from the effective date of the Retiree's retirement to the date of the Retiree's death multiplied by the percent of Final Average Salary the Retiree received as a retirement benefit under the System's benefit formula, and
  - ii. The number of years from the date of the Retiree's death to the June 30 in the year for which the Total Annual Distribution is calculated multiplied by the percent of Final Average Salary the Retiree received as a retirement benefit under the System's benefit formula.
- c. For each Surviving Spouse of an Active Member, there shall be assigned the number of points equivalent to the number of years from the date of the Active Member's death to the June 30 in the year for which the Total Annual Distribution is calculated multiplied by the percent of Final Average Salary earned by the Active Member as of the date of death. For the purposes of this paragraph, the percent of Final Average Salary shall not be less than forty percent (40%).
- d. For each Surviving Children's Unit:
  - i. In the case where the deceased parent was a Retiree, there shall be assigned the number of points equivalent to the sum of:

- (1) The number of years from the effective date of the Retiree's retirement to the date of the Retiree's death multiplied by the percent of Final Average Salary the Retiree received as a retirement benefit under the System's benefit formula, and
  - (2) The number of years from the date of the Retiree's death to the June 30 in the year for which the Total Annual Distribution is calculated multiplied by the percent of Final Average Salary the Retiree receives as a retirement benefit under the System's benefit formula.
- ii. In the case where the deceased parent was an Active Member, there shall be assigned the number of points equivalent to the number of years from the date of the Active Member's death to the June 30 in the year for which the Total Annual Distribution is calculated multiplied by the percent of Final Average Salary earned by the Active Member as of the date of death. For the purposes of this paragraph, the percent of Final Average Salary shall not be less than forty percent (40%).
- e. For each Optional Settlement Beneficiary, there shall be assigned the number of points equivalent to the sum of:
- i. The number of years from the effective date of the Retiree's retirement to the date of the Retiree's death multiplied by the percent of Final Average Salary the Retiree received as a retirement benefit under the System's benefit formula, and
  - ii. The number of years from the date of the Retiree's death to the June 30 in the year for which the Total Annual Distribution is calculated multiplied by the percent of Final

Average Salary the Retiree received as a retirement benefit  
under the System's benefit formula.

B. Eligible Distribution Points shall be calculated for each eligible recipient as follows:

1. For each Retiree, the Eligible Distribution Points are the sum of the YOS points and the YR points.
2. For each Surviving Spouse of a Retiree, the Eligible Distribution Points are:
  - a. The sum of the YOS points and the YR points, multiplied by
  - b. The percent of the Retiree's benefit that is being received by the Surviving Spouse as a monthly benefit.
3. For each Surviving Spouse of an Active Member, the Eligible Distribution Points are the sum of the YOS points and the YR points.
4. For the Surviving Children's Unit, the Eligible Distribution Points are:
  - a. The sum of the YOS points and the YR points, multiplied by
  - b. The percent of the Retiree's or Active Member's benefit that would be received by the surviving spouse if there were a surviving spouse, and further multiplied by
  - c. Twenty-five percent (25%) if there is only one child in the Surviving Children's Unit or fifty percent (50%) if there are two children in the Surviving Children's Unit or seventy-five percent (75%) if there are three or more children in the Surviving Children's Unit.
5. For the Optional Settlement Beneficiary, the Eligible Distribution Points are:
  - a. The sum of the YOS points and the YR points, multiplied by
  - b. The percent of the Retiree's benefit that is being received by the Optional Settlement Beneficiary as monthly benefit.

C. For the purposes of the calculation of Eligible Distribution Points, the number of years in each calculation shall be the actual number of years rounded to the nearest five decimal places.

**SECTION 5. Distribution Point Value.**

The Distribution Point Value shall be determined by dividing the Total Annual Distribution (as determined pursuant to SECTION 3 above) by the total number of Eligible Distribution Points for all eligible recipients.

**SECTION 6. Allocation of Total Annual Distribution.**

- A. The distribution to be made to each eligible Retiree, Surviving Spouse of a Retiree, Surviving Spouse of an Active Member, and Optional Settlement Beneficiary shall be the eligible recipient's Eligible Distribution Points multiplied by the Distribution Point Value.
- B. The distribution to be made to each eligible surviving child shall be the Surviving Children's Unit's Eligible Distribution Points multiplied by the Distribution Point Value and divided by the number of children in the Unit.

**SECTION 7. For the purposes of this Resolution, the following definitions shall apply:**

- A. "Retiree" means a person who has retired from the Federated City Employees Retirement System under the provisions of the System. "Retiree" does not include any person who has separated from City service but is not receiving a benefit from the Plan.
- B. "Surviving Spouse of a Retiree" means the person who meets the eligibility requirements for a surviving spouse benefit under Part 12 of Chapter 3.28 of the San José Municipal Code. "Surviving Spouse of a Retiree" does not include any person who is receiving a payment from the Retirement Fund solely because of a domestic relations order dividing the community interest in the retirement benefits.
- C. "Surviving Spouse of an Active Member" means the person who meets the eligibility requirements for a surviving spouse benefit under Part 11 of Chapter 3.28 of the San José Municipal Code. "Surviving Spouse of an Active Member" does not include any person who would receive a payment from the Retirement

Fund upon the retirement of the Active Member solely because of a domestic relations order dividing the community interest in the retirement benefits.

- D. "Surviving Children's Unit" means all eligible surviving children who are receiving surviving children's benefits under the applicable provisions of the Federated City Employees Retirement System.
- E. "Optional Settlement Beneficiary" means a person who is receiving a monthly payment from the System because of an election made pursuant to Part 13 of Chapter 3.28 of the San Jose Municipal Code.
- F. "Minimum Balance" means the dollar amount determined by multiplying Seven Thousand Dollars (\$7,000) by the total number of eligible recipients in existence on June 30 in the year for which the Total Annual Distribution is calculated.

SECTION 8. In the event a person is a Retiree, a Surviving Spouse of a Retiree, a Surviving Spouse of an Active Member, a member of a Surviving Children's Unit, or an Optional Settlement Beneficiary on June 30 in the year for which the Total Annual Distribution is calculated, but dies before the distribution for that year is made:

- A. The amount that would have been paid to the Retiree shall be paid:
  - 1. To the deceased's person's eligible survivor(s), or
  - 2. If there is no eligible survivor, to the deceased person's named beneficiary, or
  - 3. If there is no eligible survivor and no living named beneficiary, to the deceased person's estate.
- B. The amount that would have been paid to a Surviving Spouse of a Retiree or a Surviving Spouse of an Active Member shall be paid:
  - 1. To the Surviving Children's Unit, or
  - 2. If there is no Surviving Children's Unit, to the estate of the Surviving Spouse.
- C. The amount that would have been paid to a member of the Surviving Children's Unit shall be paid to the remaining members of the Surviving Children's Unit in equal shares. If there is no member of the Survivor Unit surviving, the amount



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that would have been paid shall revert to the SRBR balance to be carried over to the next distribution year.

- D. The amount that would have been paid to an Optional Settlement Beneficiary shall be paid to the Optional Settlement Beneficiary's estate.

SECTION 9. All calculations made pursuant to this Resolution shall be made as of June 30 in the year for which the Total Annual Distribution is calculated. In the event an adjustment is made in the Years of Service, Years Retired, or percent of Final Average Salary for any eligible recipient and such adjustment is made after June 30 in the year for which the Total Annual Distribution is calculated, there shall be no adjustment to any calculation made pursuant to this Resolution.

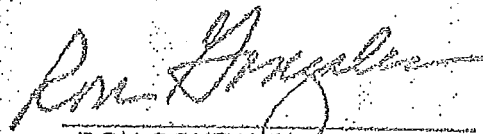
ADOPTED this 16<sup>th</sup> day of December, 2003, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTÉSE, DANDO,  
GREGORY, LOZOTTE, REED, WILLIAMS, YEAGER;  
GONZALES

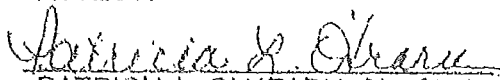
NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE

  
\_\_\_\_\_  
RON GONZALES  
Mayor

ATTEST:

  
\_\_\_\_\_  
PATRICIA L. O'HEARN, City Clerk

**3.36.580 Supplemental retiree benefit reserve.****A. Establishment and Purpose.**

1. The board shall establish a reserve in the retirement fund to be known as the supplemental retiree benefit reserve or SRBR.
2. The purpose of the SRBR shall be to provide a source of funding for benefits to supplement those benefits otherwise provided by this plan or the Chapter 3.32 plan to former members of such plans who are receiving benefits, survivors of such former members, and survivors of members who die prior to receiving benefits from this plan.

**B. Funding.**

1. The initial amount allocated to the SRBR shall be ten percent of the plan's prefunded actuarial accrued liability as of June 30, 1999, as determined by the board's actuary. The board's actuary shall calculate the initial funding amount without regard to any plan amendments that became effective after June 30, 1999.
2. Each June 30, beginning June 30, 2000, there shall be allocated to the SRBR the investment earnings attributable to the balance in the SRBR as of June 30 of the calendar year in which the allocation is made. Investment earnings credited to the SRBR shall be calculated as though the transfer required by paragraphs 3. and 4. of this subsection B. had been made on the immediately following July 1 (first allocation on July 1, 2000) regardless of the actual date such transfer is made. In the event the investment earnings for the retirement fund are less than zero, no investment earnings shall be allocated to the SRBR and no reduction shall be made to the SRBR balance except as provided in subsection C. below.
3. The board shall determine the excess earnings for the twelve months ending June 30, 2000, and for the twelve months ending June 30, 2001, and shall transfer to the SRBR ten percent of the excess earnings for each such twelve-month period.
4. Within ninety days from and after receipt of audited financial statements for each fiscal year, commencing with the year 2002, the board shall determine, and by written resolution declare, the excess earnings as of June 30 in each such year, and shall transfer ten percent of such excess earnings to the SRBR. The excess earnings shall be added to the SRBR principal and shall not be available for distribution under subsection D.

**C. Reduction of SRBR Balance.**

1. If the city's contribution rate, as determined by the board's actuary during any actuarial valuation performed after June 30, 1999, will increase as a result of poor investment earnings in the retirement fund, there shall be transferred from the SRBR

to the regular retirement fund and the cost-of-living fund an amount equal to ten percent of the city's increased contributions for the first twelve months following the increase in the contribution rates. Such transfers shall be limited to those situations where the increase in the city's contribution rate is attributable to poor investment earnings; no such transfer shall be made for any increase in the city's contribution rate that is due to any factor other than poor investment earnings including, but not limited to, increases in medical or dental premium costs, enhancements to benefits provided under the plan, or changes in the actuarial assumptions.

2. Notwithstanding paragraph 1. of this subsection C., the amount transferred from the SRBR because of the increase in the city's contributions shall not exceed five percent of the accrued balance in the SRBR as of the date of the actuarial valuation.

D. Distributions.

1. The board shall make an initial distribution from the SRBR during calendar year 2002.
2. Beginning in calendar year 2003, the board shall make an annual distribution from the SRBR.
3. The initial distribution from the SRBR shall be made solely to former members of this plan or the Chapter 3.32 plan who are receiving benefits as of June 30, 2001, and survivors (of such former members or of members who died prior to receiving benefits from this plan) who are receiving benefits as of June 30, 2001; provided, however, that if a member or former member died after June 30, 2001, but before the initial distribution, the survivor shall be deemed to have been receiving benefits as of June 30, 2001.
4. All subsequent annual distributions from the SRBR shall be made solely to former members of this plan or the Chapter 3.32 plan who are receiving benefits as of the June 30 immediately preceding the distribution date and survivors (of such former members or of members who died prior to receiving benefits from this plan) who are receiving benefits as of said June 30.
5. The board shall develop a methodology for distributions from the SRBR such that supplemental benefits provide a greater benefit for those persons who have been in benefit status for a longer period of time and those persons receiving the lowest monthly benefit payments. Upon the approval of the methodology by the city council, the board shall make distributions in accordance with such methodology.
6. Except as required by subsection C. or in the case of the termination of this plan, the board shall not transfer or distribute funds in the SRBR if such transfer or distribution would reduce the SRBR principal.

## **Police and Fire Department Retirement Plan**

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E. Definitions. For the purpose of this Section 3.36.580, the terms listed herein shall have the following meanings:

1. "Excess earnings" means the earnings of the retirement fund that remain after interest has been credited to the SRBR as provided in paragraph B.2. and the actuarial assumed earnings rate adopted by the board (and in effect on June 30 of the year in which the SRBR calculation is performed) has been credited to other reserves.
2. "Former member" means a person who has retired under the provisions of this chapter or Chapter 3.32 or a person who separated from city service without retiring but left his or her contributions on deposit in the retirement fund.
3. "Investment earnings" means the earnings of the retirement fund during the twelve months ending June 30 as determined by the board's actuary using the same methodology used to determine the value of assets for the actuarial valuation. In the case of investment earnings attributable to the SRBR, the application of the methodology shall begin as of July 1, 1999.

(Ords. 26416, 26536.)

RESOLUTION NO. 70822

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ APPROVING THE METHODOLOGY FOR THE DISTRIBUTION OF MONEYS IN THE SUPPLEMENTAL RETIREE BENEFIT RESERVE OF THE POLICE AND FIRE DEPARTMENT RETIREMENT FUND**

WHEREAS, pursuant to Section 3.36.580 A of the San José Municipal Code, the Board of Administration for the Police and Fire Department Retirement Plan (the "Board") has established the Supplemental Retiree Benefit Reserve (the "SRBR") in the Police and Fire Department Retirement Fund; and

WHEREAS, Section 3.36.580 D provides that distributions from the SRBR shall be made only to retired members, survivors of members and survivors of retired members of the Police and Fire Department Retirement Plan (the "Plan"); and

WHEREAS, Section 3.36.580 D further provides that the Board shall make distributions in accordance with a methodology developed by the Board and approved by the City Council; and

WHEREAS, the Board has developed a methodology for calculating the amount of distributions from the SRBR and has recommended City Council approval of said methodology;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSÉ:**

**SECTION 1.** The City Council hereby approves the methodology for the distribution of moneys from the Supplemental Retiree Benefits Reserve of the Police and Fire Department Retirement Fund recommended by the Board and described in this Resolution.

**SECTION 2.** This approval shall remain in effect until such time as the Board recommends a subsequent methodology and the Council adopts a resolution approving the subsequent methodology.

**SECTION 3. Base Distribution.**

- A. Eighty percent (80%) of the annual amount available for distribution from the SRBR shall be distributed as the "Base Distribution". The amount of the Base Distribution to be paid to each Retired Member or Survivor Unit shall be determined by multiplying the total Base Distribution by the applicable Distribution Fraction.
- B. For the purposed of calculating the Distribution Fraction, points shall be assigned for Years of Service and for Years Retired as follows:
  - 1. Years Of Service (YOS) Points:
    - a. For each Retired Member, there shall be assigned one (1) point for each year of the Retired Member's Police and Fire Plan service for each of the first twenty (20) years plus two (2) points for each year in excess of twenty (20) years.
    - b. For each Survivor Unit, there shall be assigned one (1) point for each year of the deceased person's Police and Fire Plan service for each of the first twenty (20) years plus two (2) points for each year in excess of twenty (20) years. In the case where the deceased person died before separating from City service, the Survivor Unit shall be credited with the greater of (i) the actual number of years of the deceased person's Police and Fire Plan service or (ii) thirty years.
  - 2. Years Retired (YR) Points: There shall be assigned two (2) points for each year retired where:
    - a. For each Retired Member, Years Retired means the number of years from the effective date of the Retired Member's retirement to the June 30 immediately preceding the date the Base Distribution is made.
    - b. For each Survivor Unit, Years Retired means the number of years from the Survivor Unit's effective date to the June 30 immediately preceding the date the Base Distribution is made where "effective date" means:

- i. The effective date of the deceased person's retirement where the deceased died after retirement under this Plan; or
  - ii. The date of the deceased person's death in the case where the deceased died prior to separation from City service or died after separation from City service but before receiving any benefits from this Plan.
- c. Notwithstanding paragraph b above, in the case where a surviving spouse's benefits ceased because of remarriage but were reinstated pursuant to Section 3.36.1295, Years Retired for the Survivor Unit means the actual number of years during which survivorship benefits were paid from this Plan to any member of the Survivor Unit.
- C. The Distribution Fraction shall be determined as follows:
- $$\frac{\text{Years of Service Points} + \text{Years Retired Points}}{\text{Total Points for Base Distribution}}$$
- D. The amount payable to each member of the Survivor Unit shall be the total Base Distribution payable to the Survivor Unit divided among the persons in the Survivor Unit in the same proportion as the survivorship benefits are paid.
- E. For the purposes of distributions from the SRBR, the number of years in each calculation shall be the actual number of years rounded to the nearest year.

SECTION 4. Bonus Payment.

- A. Twenty percent (20%) of the annual amount available for distribution from the SRBR shall be distributed as the "Bonus Payment". Bonus Payments shall be made only to Retired Members and Survivor Units who meet the following eligibility requirements:
1. The Years Retired is at least ten (10) years; and
  2. The Retired Member or Survivor Unit is receiving a monthly benefit from the Plan that is less than two-thirds of the average monthly retirement benefit paid during the twelve months ending on the June 30 immediately preceding the date the Base Distribution is made.

- B. The amount of the Bonus Payment to be paid to each eligible Retired Member or eligible Survivor Unit shall be determined by multiplying the total Bonus Payment by the applicable Distribution Fraction.
- C. For the purposes of calculating the Distribution Fraction, points shall be assigned for Years Of Service and for Years Retired as described in SECTION 3 of this Resolution.
- D. The Distribution Fraction shall be determined as follows:
$$\frac{\text{Years Of Service Points} + \text{Years Retired Points}}{\text{Total Points for Bonus Payment}}$$
- F. The amount payable to each member of the Survivor Unit shall be the total Bonus Payment payable to the Survivor Unit divided among the persons in the Survivor Unit in the same proportion as the survivorship benefits are paid.

SECTION 5. For the purposes of this Resolution, the following definitions shall apply:

- A. "Retired Member" means a person who has retired from the Police and Fire Department Retirement Plan under the provisions of the Plan. "Retired Member" does not include any person who has separated from City service but is not receiving a benefit from the Plan.
- B. "Survivor Unit" means all eligible survivors (eligible surviving spouse and eligible surviving children) who are receiving a survivor's benefit under the provisions of the Police and Fire Department Retirement Plan. "Eligible survivor" does not include any person who is receiving a payment from the Retirement Fund solely because of a domestic relations order dividing the community interest in the retirement benefits.
- C. "Total Points for Base Distribution" means the sum of the numerators of all Distribution Fractions for all Retired Members and all Survivor Units.
- D. "Total Points for Bonus Payment Years" means the sum of the numerators of all Distribution Fractions for the Retired Members and Survivor Units who are eligible to receive a Bonus Payment.



SECTION 6. In the event a person is a Retired Member or is a member of a Survivor Unit on the June 30 immediately preceding the date the Base Distribution is made, but dies before the distribution for that year is made:

- A. The amount that would have been paid to the Retired Member shall be paid to the deceased's Survivor Unit or, if there is no eligible survivor, to the deceased person's named beneficiary. If there is no eligible survivor and no living named beneficiary, the amount that would have been paid shall become available for distribution to the remaining eligible Retirement Members and Survivor Units.
- B. The amount that would have been paid to a member of the Survivor Unit shall be paid to the remaining members of the Survivor Unit in the same proportion as the survivorship benefits are paid. If there is no member of the Survivor Unit surviving, the amount that would have been paid shall become available for distribution to the remaining eligible Retirement Members and Survivor Units.

ADOPTED this 29th day of January, 2002, by the following vote:

AYES: CANFOS, CHAVEZ, CORTESE, DANDO, LEZOTTE,  
REED, SHIRAKAWA, WILLIAMS, YEAGER; GONZALES

NOES: NONE

ABSENT: NONE

DISQUALIFIED: DIQUISTO

ATTEST:

Patricia L. O'Hearn  
PATRICIA L. O'HEARN  
City Clerk

Ron Gonzales  
RON GONZALES  
Mayor